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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
KEITH W. COOLEY, DIRECTOR

KEN ROSS
ACTING COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 4675 and 4676 (tie-barred), as introduced
TOPIC: Require Michigan Catastrophic Claims Association (MCCA) to Comply with Freedom of Information Act and Open Meetings Act
SPONSOR: Representative Michael Sak
CO-SPONSORS: Representatives Richard LeBlanc, Pam Byrnes, Hoon-Yung Hopgood, Mike Simpson, Dudley Spade, Kathy Angerer
COMMITTEE: House Committee on Insurance
Analysis Done: November 28, 2007

POSITION

The Office of Financial and Insurance Services (OFIS) supports this legislation.

PROBLEM/BACKGROUND

The Michigan Catastrophic Claims Association (MCCA) was established in 1978 and is a critical part of the no-fault automobile insurance system. Because there is no limit on the amount of coverage for personal injuries under a Michigan no-fault policy, the liability for this coverage would be too large for most individual insurers to bear. In other lines, when a liability is larger than an insurer can afford to accept on its own, the insurer transfers part of the risk to other insurers through a mechanism known as reinsurance -- insurance for an insurer.

Since the private market was not able to provide reinsurance for unlimited exposures without this special mechanism, the MCCA was created to act as the reinsurer to companies writing auto insurance in Michigan. As of July 1, 2007, each insurance company will pay the first \$420,000 of any catastrophic claim and be reimbursed by the MCCA for the rest. This retention level gradually increases over the next 4 years until it reaches \$500,000 in 2011. As the threshold increases, each insurance company assumes more of the risk for catastrophic claims. Any amounts over the threshold are paid by the MCCA and spread across all member companies in the form of the annual MCCA assessment.

Each year, the MCCA board of directors analyzes the amount needed to cover the lifetime claims of all people catastrophically injured in car accidents. This analysis includes an actuarial review

of the MCCA's investment returns, surplus and liabilities, including medical cost inflation. This analysis yields an amount needed to pay those lifetime claims and may be adjusted to reflect excesses or deficiencies in earlier assessments. A per vehicle assessment is set for the year based on this amount. Each insurance company writing auto insurance is then assessed by the MCCA for each vehicle it insures. In effect, the MCCA acts as an insurer whose policyholders are Michigan automobile insurance companies. Insurance companies may pass the assessment on through the premium charged to policyholders.

This MCCA assessment has varied considerably over the years. In 1995, when the MCCA determined that its surplus was such that it could and should be reduced, it began applying a credit to the annual assessment amount. From 1995-2001 the MCCA returned approximately \$267 per insured vehicle, in addition to a one-time lump sum payment of \$180 in 1998 (\$447 total per vehicle). Unfortunately, due to decreased investment returns and increasing medical costs, the MCCA's surplus is currently underfunded. For the period from July 1, 2007 through June 30, 2008 the MCCA Board will assess \$123.15 per vehicle, which includes \$106.63 in pure premium (the actual costs for current year expenses) and a \$16.42 surplus/deficit adjustment (which reduces the shortfall in discounted reserves held for future obligations) and a \$.10 administration fee.

There are those who believe it would be a benefit to consumers if the MCCA was held more accountable for its actions and its activities, records, and meetings were more open to the public.

DESCRIPTION OF BILL

House Bills 4675 and 4676 are tie-barred together. The proposed legislation would require the MCCA to comply with the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA).

SUMMARY OF ARGUMENTS

Pro

The MCCA board is comprised of insurance industry representatives and the MCCA's meetings are closed to the public. However, because the MCCA is a legislatively created entity fulfilling an important public purpose, the deliberations of its board are of interest to all Michigan citizens. The OMA and FOIA were designed to ensure that certain entities are accountable for their actions by making them accessible, and their records open and available to the public. Requiring the MCCA to comply with the OMA and FOIA would increase the transparency of its deliberations, especially with regard to the setting of assessments, which are usually passed on to consumers from its member insurers.

Con

The MCCA is a legislatively created entity that was intended to operate as a non-public reinsurance company by reimbursing insurance companies for medical expenses that the insurance companies incur under the Michigan no-fault system. The current MCCA board is

comprised of high level company officials whose interest is in ensuring that the current no-fault system is adequately funded to pay for Michigan's generous no-fault benefits. These individuals are not motivated by political pressures, but instead by the fact that, should the MCCA fail to meet its obligations, the financial security of each auto insurer in Michigan would be in serious jeopardy. Requiring the MCCA to be subject to FOIA and OMA may politicize the MCCA and its operations, contrary to its original purpose of operating as a non-public entity.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services:

Budgetary: None known.

Revenue:

Comments:

(b) To the Department of Labor and Economic Growth: None known.

Budgetary: None known.

Revenue:

Comments:

(c) To the State of Michigan:

Budgetary: None known.

Revenue:

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

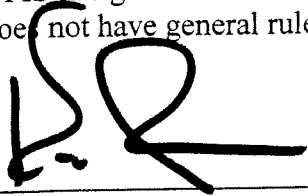
None known.

ANY OTHER PERTINENT INFORMATION

This proposed legislation is similar to legislation introduced in previous legislative sessions.

ADMINISTRATIVE RULES IMPACT

OFIS has general rulemaking authority under the Insurance Code of 1956, 1956 PA 218, but does not have general rulemaking authority under the Open Meetings Act, 1976 PA 267.

A handwritten signature in black ink, appearing to be 'KR' with a stylized flourish.

Ken Ross
Acting Commissioner

11-27-07

Date